

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE

CASE NO.: SC09-1182

N. JAMES TURNER

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JQC Case No.: 09-01

**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES  
TO THIRD AMENDED CONSOLIDATED FORMAL CHARGES**

Respondent, N. James Turner, by and through undersigned counsel, hereby files his Answer and Affirmative Defenses in response to the Notice of Third Amended Consolidated Formal Charges filed in this proceeding, and states:

1. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 1 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

2. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 2 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

3. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 3 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

4. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 4 of the Notice of Third Amended Consolidated Formal Charges

and demands strict, clear and convincing proof thereof.

5. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 5 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

6. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 6 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

7. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 7 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

8. The Respondent admits the allegations set forth in paragraph 8 of the Notice of Third Amended Consolidated Formal Charges and accepts full responsibility for his actions.

9. The Respondent admits the allegations set forth in paragraph 9 of the Notice of Third Amended Consolidated Formal Charges and accepts full responsibility for his actions.

10. As for the allegations set forth in paragraph 10 of the Notice of Third Amended Consolidated Formal Charges:

- a) Respondent admits that he loaned money to a female employee on approximately September 30, 2009. However, the loan was made at

the request of the employee and under circumstances that were characterized as a family emergency involving her minor children. These actions were done by Respondent out of a sense of kindness, compassion and generosity. The employee never repaid the loan and instead, fabricated allegations of verbal abuse against her by Respondent.

- b) Respondent admits that he showed kindness, compassion and support for another female employee whose son was suffering from a serious illness. As an act of comfort, Respondent gave this employee the well known book, *When Bad Things Happen to Good People*, by Harold S. Kushner. Respondent also made regular inquiries about the welfare of the employee and her son. In the context of kindness, compassion, friendship and support, Respondent admits hugging and kissing this employee on the cheek and that such actions were welcomed and appreciated by the employee.
- c) When called upon to testify, Respondent's current judicial assistant, and other court personnel, including deputy sheriffs, will testify to Respondent's disposition, temperament and demeanor.
- d) As for the remainder of the allegations set forth in paragraph 10 of the Notice of Third Amended Consolidated Formal Charges, Respondent

denies each and every allegation and legal conclusion set forth therein and demands strict, clear and convincing proof thereof.

11. As to the allegations set forth in paragraph 11 of the Notice of Third Amended Consolidated Formal Charges, Respondent states:

- a) Respondent admits that he occasionally put his feet up while sitting on the bench in order to relieve pain in his legs and accepts full responsibility for his actions.
- b) Respondent denies that he ever purposely delayed the release of completed orders.
- c) For personal protection, Respondent carried a .38 caliber revolver. Respondent is a military veteran and has had a concealed weapons permit for approximately 10 years. Upon taking the bench, Respondent explored alternatives to carrying his weapon in a concealed fashion. Upon the suggestion of a law enforcement officer, he carried his revolver in a waist holster inside the waist of his pants. The other method that Respondent used for carrying his revolver was in a holster strapped around his ankle. In approximately February or March of 2009, Respondent's holster and revolver were visible to persons on the sixth floor of the Osceola County Courthouse. In approximately

March or April of 2009, Chief Judge Perry advised Respondent against carrying his revolver in his waist holster. Respondent assured his Chief Judge that he would not carry his revolver in such a manner and never did again. At no time did Respondent ever remove his revolver from his holster in the courthouse.

- d) Respondent admits using his cell phone while on the bench during breaks in the spring of 2009, however, the use of the cell phone was limited to communications with his chambers and Court Administration control desk involving law enforcement officers with requests for warrants to be signed. Respondent never used his cell phone while on the bench during proceedings.
- e) Respondent admits using his computer on the bench to review personal e-mails, however, this was done during breaks.
- f) Respondent denies “screaming and yelling from the bench at litigants, attorneys and court personnel” as is alleged in paragraph 11 of the Third Amended Notice of Formal Charges. When and if called upon to testify, the attorneys and court personnel who regularly appear before Respondent will substantiate his demeanor and temperament in the courtroom. Furthermore, the 2009 Central Florida Association of Criminal Defense Lawyers

Judicial Poll Results, gave Respondent a score of 4.11 for Demeanor on a 5 point scale.

- g) As to the remaining allegations in paragraph 11 of the Notice of Formal Charges, Respondent denies each and every allegation and legal conclusion set forth therein and demands strict, clear and convincing proof thereof.

12. As to the allegations set forth in paragraph 12 of the Notice of Third Amended Consolidated Formal Charges, Respondent states:

- a) The property referred to consisted of what appeared to be two large “diamond” earrings worn on each ear by the male Juvenile who was approximately 17 years of age and who appeared before Respondent for a court cost hearing.
- b) Respondent inquired of the Juvenile as to the cost of the earrings inasmuch as it went to the issue of the ability of the Juvenile to pay the costs that he owed.
- c) The property was not seized by the Respondent but was surrendered by the Juvenile. Moreover, the value of the property was determined by the Juvenile and not the Respondent. The property was returned to the Juvenile.
- d) When and if called upon to testify, the attorneys and court

personnel who regularly appear before Respondent will substantiate his diligence in protecting the rights of juveniles.

- e) As to the remaining allegations in paragraph 12 of the Notice of Formal Charges, Respondent denies each and every allegation and legal conclusion set forth therein and demands strict, clear and convincing proof thereof.

13. The Respondent denies each and every allegation and legal conclusion set forth in paragraph 13 of the Notice of Third Amended Consolidated Formal Charges and demands strict, clear and convincing proof thereof.

14. All remaining allegations and legal conclusion in the Notice of Third Amended Consolidated Formal Charges are denied and Respondent demands strict, clear and convincing proof thereof.

### **AFFIRMATIVE DEFENSES**

In further answering the Amended Notice of Third Amended Consolidated Formal Charges, the Respondent affirmatively alleges as follows:

#### **FIRST DEFENSE**

Respondent denies each of the allegations in the Notice of Third Amended Consolidated Formal Charges. Without waiving this denial, the activities alleged to have occurred as alleged in paragraphs 1 through 7 of the Third Amended Notice of Consolidated Formal Charges are protected by the First Amendment to

the United States Constitution. *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

## **SECOND DEFENSE**

A Grievance Committee of The Florida Bar, after reviewing the Complaint by The Florida Bar against Judge Turner, 203041, Case No. 2009-30, S6S(09E), which alleged the same violations as are before this Panel, found that there was no probable cause to charge Judge Turner with improperly solicited campaign funds. Although the Code of Judicial Conduct does not define the term “decisional law,” it is suggested that this determination by a quasi-judicial administrative body such as The Florida Bar Grievance Committee, which was required to investigate or ascertain the existence of facts and weigh evidence and draw conclusions, should be regarded as decisional law within the context of this term as contained in the Preamble to the Code of Judicial Conduct. As such, the Code of Judicial Conduct should be applied consistent with this decisional law as to whether Judge Turner improperly solicited campaign contributions during his campaign. Moreover, because both The Florida Bar and the Judicial Qualifications Commission are arms of the Supreme Court of Florida, prosecution of this matter by the Judicial Qualifications Commission runs counter to the doctrines of collateral estoppel and



double jeopardy. In the alternative, the findings and recommendations of the Judicial Qualifications Commission should be mitigated by the finding of no probable cause by The Florida Bar. Therefore, Respondent respectfully submits that a determination has already been made on this issue by the decision of The Florida Bar with its finding of no probable cause and dismissing the grievance.

### **THIRD DEFENSE**

Section 7A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

### **FOURTH DEFENSE**

Canon 7C(1) has been held unconstitutional by the Eleventh Circuit Court of Appeals. *Weaver v. Bonner*, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002) as having a chilling effect on a candidate's speech.

### **FIFTH DEFENSE**

The conduct as alleged in paragraph 10 of the Notice of Third Amended Consolidated Formal Charges would not create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, any perception that the Respondent's conduct was inappropriate sexual conduct.

## **SIXTH DEFENSE**

The conduct as alleged in paragraph 12 of the Notice of Third Amended Consolidated Formal Charges would not create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, any perception that the Respondent's conduct was improper or that the child was denied due process. The property referred to in paragraph 12 of the Notice of Third Amended Formal Charges consisted of what appeared to be two large "diamond" earrings worn on each ear by the male Juvenile who was approximately 17 years of age and who appeared before Respondent for a court cost hearing. Respondent inquired of the Juvenile as to the cost of the earrings inasmuch as it went to the issue of the ability of the Juvenile to pay the costs that he owed. The property was not seized by the Respondent but was surrendered by the Juvenile. Moreover, the value of the property was determined by the Juvenile and not the Respondent. The property was returned to the Juvenile.

Respectfully submitted this 29th day of June, 2010.

/s/ Barry W. Rigby  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 29th day of June, 2010, to the persons listed on the attached Service List.

/s/ Barry W. Rigby

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### **Service List**

Marvin E. Barkin, Esq. Michael K. Green, Esq. Special Consulting Counsel Trenam Kemker 101 E. Kennedy Blvd., Suite 2700 P.O. Box 1102 Tampa, FL 33601-1102	Michael L. Schneider, Esq. General Counsel Judicial Qualifications Commission 1110 Thomasville Road Tallahassee, FL 32303
Lauri Waldman Ross, Esq. 9130 S. Dadeland Blvd. Ste. 1612 Miami, FL 33156	The Honorable John P. Cardillo, Esq. Chairman, Hearing Panel, Florida JQC 3550 Tamiami Trail E. Naples, Florida 34112-4905